

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES EDWARD PAYNE,

Plaintiff,

vs

6:08-CV-143

OFFICER BRANDON JONES, Ind. and as a  
member of the City of Utica Police Department;  
OFFICER JOHN ABEL, Ind. and as a member  
of the City of Utica Police Department; and  
CITY OF UTICA;

Defendants.

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APPEARANCES:

OF COUNSEL:

FRANK POLICELLI, ESQ.

Attorney for Plaintiff

10 Steuben Park

Utica, New York 13501

CORPORATION COUNSEL FOR  
CITY OF UTICA, NEW YORK

Attorneys for Defendants Abel,  
and City of Utica

City of Utica, Law Department

1 Kennedy Plaza

Utica, New York 13502

JOHN P. ORILIO, ESQ.

ARMOND J. FESTINE, ESQ.

Asst. Corporation Counsel

GETNICK LIVINGSTON ATKINSON

GIGLIOTTI & PRIORE, LLP

Attorneys for Defendant Jones

258 Genesee Street

Utica, New York 13502-4628

MICHAEL E. GETNICK, ESQ.

PATRICK G. RADEL, ESQ.

DAVID N. HURD

United States District Judge

**ORDER**

As the prevailing party, plaintiff James Edward Payne has made an application for attorney fees and costs. He is seeking attorney fees in the sum of \$112,887.50 based

upon 410.5 hours at \$275.00 per hour plus costs of \$2,517.18 for a total of \$115,404.68.  
(Docket No. 119) Defendant City of Utica opposes the hourly rate and some of the hours.  
(Docket No. 120)

The prevailing hourly rate in this district for an experienced attorney such as the plaintiff's, is \$210.00 per hour. The requested number of hours and the costs are reasonable. Of the hours expended, 14.0 were with regard to the punitive damages claim against the defendant Brandon Jones.

Therefore, attorney fees are awarded to plaintiff as follows:

Against Defendants Brandon Jones and City of Utica:

396.5 hours @ \$210.00	\$83,265.00
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Against Defendant Brandon Jones:

14.0 hours @ \$210.00	2,940.00
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Plaintiff is awarded \$2,517.18 in costs taxable to defendants Brandon Jones and City of Utica.

Accordingly, it is

ORDERED, that

1. Plaintiff James Edward Payne is awarded attorney fees and costs in the total amount of \$88,722.18;
2. Defendants Brandon Jones and City of Utica are jointly and severally liable for \$60,000.00 compensatory damages; \$83,265.00 in attorney fees, and \$2,517.18 in costs - for a total of \$145,782.18;
3. Defendant Brandon Jones is individually liable for \$300,000.00 punitive damages and \$2,940.00 in attorney fees for a total of \$302,940.00;

4. Defendant City of Utica is liable for the total of \$302,940.00 for punitive damages and attorney fees against defendant Brandon Jones; and

5. The Clerk of the Court is directed to enter judgments:

a. In favor of the plaintiff James Edward Payne in the amount of \$145,782.18 against defendants Brandon Jones and City of Utica;

b. In favor of the plaintiff James Edward Payne in the amount of \$302,940.00 Individually against defendant Brandon Jones;

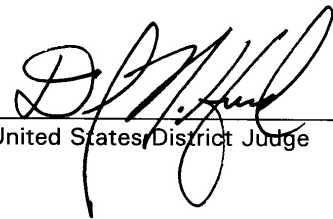
c. The total of the two judgments is the amount of \$448,722.18;

d. The defendant City of Utica be directed to satisfy the individual judgment against defendant Brandon Jones; and

e. Dismissing the complaint against the defendant John Abel.

IT IS SO ORDERED.

Dated: November 25, 2009  
Utica, New York.



United States District Judge